

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 DONALD RAY MCCUNE,
9 Plaintiff,
10 v.
11 NEVADA BOARD OF PAROLE et al.,
12 Defendants.
13

3:14-cv-227-RCJ-WGC

ORDER

I. DISCUSSION

15 On June 16, 2014, this Court issued a screening order dismissing Plaintiff's complaint
16 in its entirety, with prejudice, for failure to state a claim. (ECF No. 3 at 4). In the screening
17 order, this Court summarized the complaint as follows:

On February 6, 2014, defendants denied Plaintiff's parole request. Plaintiff was sentenced to life with the possibility of parole but defendants' denial of parole ha[d] effectively sentenced Plaintiff to death. The parole board denied Plaintiff's parole request on a finding that "there was a prior conviction for a sexual offense as well as repeated criminal conduct as well as a reference to . . . [a] psych panel review that was determinative of a high risk to [re-offend]." Plaintiff challenge[d] the rationale of the parole board's decision on four grounds. Plaintiff allege[d] due process violations and deliberate conscious disregard and/or negligence against defendants.

23 (*Id.* at 3). Plaintiff sought monetary damages, relocation to a facility equipped to address his
24 mental health, and parole at a mental health facility. (*Id.*). In the screening order, this Court
25 found that Plaintiff failed to state a claim because the parole board members were entitled to
26 absolute immunity for their parole board decisions pursuant to *Brown v. California Dep’t of*
27 *Corr.*, 554 F.3d 747, 751 (9th Cir. 2009). (*Id.* at 3-4).

28 Plaintiff now files a motion for reconsideration based on *Thornton v. Brown*, ___ F.3d __,
No. 11-56146, 2013 WL 7216368 (9th Cir. July 31, 2013) and the fact that he had also

1 requested injunctive relief. (ECF No. 6 at 1-2).

2 A motion to reconsider must set forth “some valid reason why the court should
 3 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to
 4 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d
 5 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented with
 6 newly discovered evidence, (2) committed clear error or the initial decision was manifestly
 7 unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. Acands,*
 8 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not an avenue to
 9 re-litigate the same issues and arguments upon which the court already has ruled.” *Brown v.*
 10 *Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

11 The Court denies Plaintiff’s motion for reconsideration. The Court has read *Thornton*
 12 *v. Brown* and finds that it is inapplicable to the facts at hand. In *Thornton*, the plaintiff brought
 13 a 42 U.S.C. § 1983 action challenging the conditions of his parole. *Thornton*, 2013 WL
 14 7216368 at *3. In this case, Plaintiff is not a parolee challenging the conditions of his parole.
 15 Instead, Plaintiff is attempting to challenge the validity of the parole board’s decision to deny
 16 him parole and seeks to have this Court grant him parole and relocate him to a mental health
 17 facility.

18 The Court finds that *Wilkinson v. Dotson*, 544 U.S. 74 (2005) is controlling. In
 19 *Wilkinson*, the Supreme Court held that “a state prisoner’s § 1983 action is barred (absent
 20 prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the
 21 target of the prisoner’s suit (state conduct leading to conviction or internal prison
 22 proceedings)—if success in that action would necessarily demonstrate the invalidity of
 23 confinement or its duration.” *Id.* at 81-82. Plaintiff seeks to invalidate the duration of his
 24 confinement by having this Court grant him parole. Accordingly, Plaintiff’s § 1983 action is
 25 barred.

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II. CONCLUSION

For the foregoing reasons, IT IS ORDERED that the motion for reconsideration (ECF No. 6) is DENIED.

Dated: This 15th day of July, 2014.


United States District Judge